

Planning and Preparing Proposals for Annexation to Boroughs

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March 2004

Proper planning and preparation are critical to the success of any annexation proposal. This is particularly true if the proposal is complex or likely to be controversial.

Encourage Public Participation in Planning for Annexation

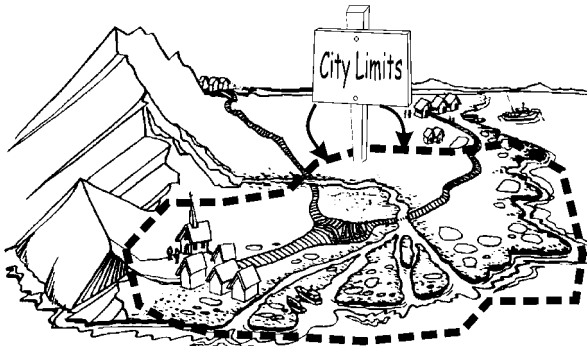
Participation in the annexation planning process by borough residents and those who live, work, and/or own property in the area contemplated for annexation should be strongly encouraged. State law (3 AAC 110.425) requires substantial opportunities for public input before certain types of annexation petitions (those subject to review by the legislature) may be submitted to the Local Boundary Commission.



Agencies and organizations currently providing services to the area contemplated for annexation (e.g., a regional educational attendance area) should be consulted.

Define Objectives

Defining the objectives of a prospective annexation proposal is a fundamental step in planning for annexation. A petitioner is required by law (3 AAC 110.420) to formally state its reasons for annexation in its petition. The following are examples of annexation objectives often used by petitioners:



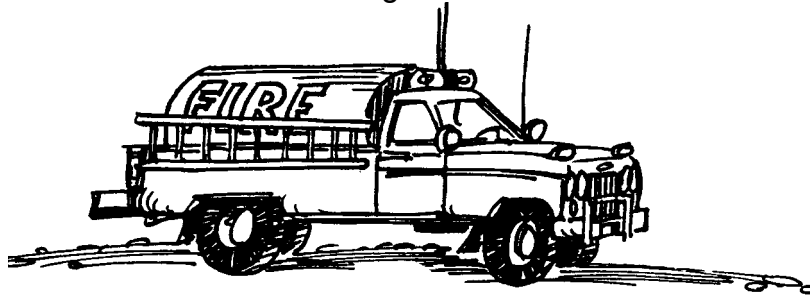
1. *To remedy inequities faced by taxpayers.* For example, it may be that borough services are being provided to nonresidents without commensurate taxes, user fees, or other adequate revenues.

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2. *To promote greater local responsibilities.* In view of the cutbacks in financial assistance from the State (e.g., revenue sharing, safe communities funding, and capital matching grants), there is a greater need for local responsibility for local needs. In the words of Governor Murkowski: "Local governments should look first to local revenue sources to help fund schools, public facilities, fire and safety services."



3. *To reduce exposure to liabilities.* Local governments may choose to provide services such as fire protection or police protection outside their corporate boundaries even though the local government may lack clear extraterritorial authority under AS 29.35.020 to do so. In other cases, there may be clear legal authority to provide extraterritorial services such as emergency medical services; however, residents and property owners inside the local government may be deprived of timely receipt of emergency services because resources were committed outside the local government's boundaries.



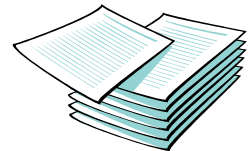
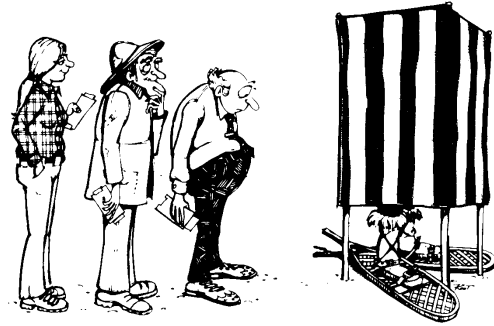
4. *To provide services needed by an outlying area.* Often residents of areas adjacent to the boundaries of a borough request services such as education, fire protection, emergency medical services, road maintenance, and utilities.



5. *To promote orderly growth and development* or to abate threats to public health and safety through platting, land use regulation, and other powers.
6. *To promote greater efficiency in governmental operations.* A borough may be able to achieve improved economies of scale by serving a larger area. Additionally, a borough may seek annexation of an area to eliminate or avoid the creation of another governmental unit in accordance with Article X, Sections 1 and 5 of Alaska's Constitution.
7. *To include areas undergoing growth and development* outside the corporate boundaries of the borough in order to provide political boundaries that more fully reflect the actual region as defined by economic, sociological, physical, cultural, transportation, and other relevant characteristics.

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8. *To enfranchise individuals.* Residents of outlying areas may be a part of the region served by the borough, but because they live on the other side of an artificial political boundary, those individuals are not allowed a voice in borough government. Annexation would allow those individuals to be appointed to borough boards and commissions, hold elective office in borough government, and vote in borough elections.
9. *To provide more orderly boundaries eliminating confusion* and uncertainty regarding whether a particular area is inside the borough.
10. *To protect or enhance the borough's tax base* in order to provide more reasonable taxes for all who benefit from borough government and/or to increase the bonding capacity of the borough.
11. *To lower utility rates.* Some local governments impose utility surcharges to areas served outside the boundaries of the local government.
12. *To extend flood insurance.* Participation in the National Flood Insurance Program requires passage of a municipal ordinance meeting Federal Emergency Management Agency standards. This requirement leaves residents and businesses in floodprone areas not participating in the National Flood Insurance Program ineligible for federal flood insurance. The lack of flood insurance coverage can have profound effects on unprotected areas.
13. *Other jurisdictional issues.* Local citizens and others cite concerns involving alcohol and drug abuse, economic development, environmental management and other local governance innovation in terms of the need for municipal jurisdiction.



Consider Potential Arguments Against Annexation

In planning for annexation, it may be helpful to anticipate arguments against any expansion of boundaries. Critics of local government annexations in Alaska often advance one or more of the following arguments.

1. *Annexation is unnecessary or unwise.* Opponents of annexation may assert that they chose to live outside the jurisdiction of a borough to pursue a lifestyle free from intrusive local government. Frequently, annexation to a borough is equated with a diminution of the personal freedom of residents of the area proposed for annexation.



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2. *The borough lacks adequate resources to extend its services within expanded boundaries.* The borough to which annexation is being sought may be characterized as deficient in terms of its delivery of services to areas already within the borough. Critics may assert that annexation will only exacerbate the borough's alleged deficiencies. Critics sometimes express the unrealistic expectation that the borough will be obligated to extend utilities, sidewalks, paved streets and other amenities to the area proposed for annexation.



3. *Annexation is just a "cash cow" for the borough.* Opponents to borough annexation may characterize the borough as being driven by greed and, thus, being inherently objectionable.

4. *Residents of the area proposed for annexation already provide commensurate support to the borough.* They pay sales taxes for goods and services purchased within the borough, they serve as volunteer firefighters, and they pay user fees for borough services.

5. *Residents may lose certain privileges and entitlements if annexed.* These may include eligibility to participate in the rural housing loan program of the Alaska Housing Finance Corporation.

6. *The area proposed for annexation is not compatible in character with the borough to which annexation is sought.* Residents and property owners in areas proposed for annexation commonly assert that they are 'rural' folk with lifestyles and service needs quite different from those of 'borough' people. Residents wish to retain the rural character of their area and oppose annexation as a step toward greater urbanization. They oppose municipal animal control, regulation of firearms, and other ordinances, regulations, and license requirements of the borough.



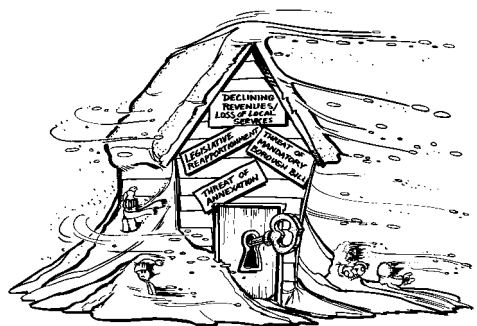
7. *Residents and businesses outside the borough chose to build and live there in order to avoid government regulation and taxes for services they do not wish to have.*

8. *There is distrust of the government and politics of the borough.* Frequently, opponents of annexation assert that they moved to the area proposed for annexation with the intention of 'getting away' from government regulation.



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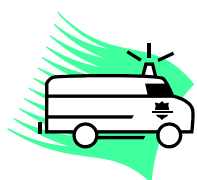
9. *The borough is unable to finance the additional services expected by residents of the area proposed for annexation.* Annexation would be a financial drain upon the borough for many years. Services may not be extended to new areas without adversely affecting in-borough service levels or without utility rate increases.
10. *Existing services may be overextended by annexation,* reducing the level of protection to the entire region.
11. *It cannot be presumed that it will be more economical for the borough to provide services to a larger area.* Extending the service area may cost much more for each unit than the existing per unit cost.
12. *Annexation, particularly annexation by the legislative-review method that does not require voter approval for annexation, is anathema to democracy.* Nonresident owners of property in the area may consider it unfair that they are not extended special procedural status in the annexation process.



Consider Alternatives to Annexation

Once the objectives have been defined and potential arguments against annexation considered, those encouraging annexation may wish to explore whether there are alternatives to annexation that may be more suitable means of accomplishing the objectives.

For example, an alternative to annexation as a means to remedy inequities and reduce liabilities might be to eliminate all extraterritorial services delivered by the borough. Of course, such



alternatives may have serious shortcomings. Eliminating all extraterritorial services including police, fire protection, and emergency medical services might be morally unacceptable to borough officials or the area as a whole.



Other alternatives to annexation that are often proposed include: (1) increasing property and other taxes within the present borough boundaries, (2) establishing unorganized borough service areas to provide services, and (3) imposing new user fees or increasing existing user fees on nonresidents.



Determine Which Method of Annexation Is Best Suited

If those advocating annexation choose to pursue annexation, the planning effort should address which particular method of annexation is best suited to accomplish the objectives.

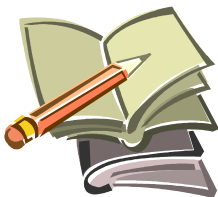


An area may be annexed to a borough in Alaska by any one of six methods, all of which require Local Boundary Commission approval. Those six methods are summarized below.

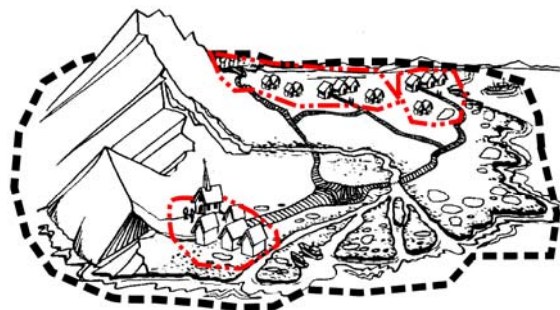
Annexation Borough-Owned Property. Borough-owned property that adjoins the existing corporate boundaries of the borough and meets all other applicable standards for annexation may be annexed to that borough. The annexing borough must adopt an ordinance providing for the annexation subject to approval by the Local Boundary Commission. The annexing borough must petition the Commission for annexation on forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c)(2), AS 44.33.812(a)(3), and 3 AAC 110.590.)



Annexation by Ordinance of an Adjoining Area upon Unanimous Consent of Property Owners and Registered Voters. An area that adjoins the existing corporate boundaries of a borough and meets all other applicable standards for annexation may be annexed to a borough provided all of the property owners and residents of that area have first petitioned the borough for annexation. Typically, this method is not used for borough annexation, but is commonly used for annexation to a city of a small number of lots in need of utilities or other services. The annexing municipality must adopt an ordinance providing for annexation subject to approval by the Local Boundary Commission. The annexing municipality must also petition the Commission for annexation on forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c)(3), AS 44.33.812(a)(3), and 3 AAC 110.590.)



Annexation by Election in an Area Proposed for Annexation. An area that adjoins the existing corporate boundaries of a borough and meets all other applicable standards for annexation may be annexed to a borough subject to approval by a majority of the voters who vote on the question within the area proposed for annexation. The petitioner must use



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annexation petition forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c)(1), and 3 AAC 110.600(b).)

Annexation by Aggregate Election. An area that adjoins the existing corporate boundaries of a borough and meets all other applicable standards for annexation may be annexed to a borough subject to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the borough to which annexation is sought. The petitioner must use annexation petition forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c), AS 44.33.812(a)(2), and 3 AAC 110.600(c).)



Annexation of an Uninhabited Area by Election. An uninhabited area that adjoins the existing corporate boundaries of a borough and meets all other applicable standards for annexation may be annexed to a borough subject to approval by a majority of the voters who vote on the question within the borough to which annexation is sought. The petitioner must use annexation petition forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (c), AS 44.33.812(a)(2), and 3 AAC 110.600(c).)

Annexation by Legislative Review. To implement an annexation under this method, the Local Boundary Commission must present an annexation proposal to the Legislature during the first ten days of a regular session of the Legislature. The annexation becomes effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The petitioner must use annexation petition forms provided by the Department of Community and Economic Development. (Article X, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a) and (b), AS 44.33.812(b)(2), and 3 AAC 110.610(b).)



Consider the Standards That Govern Annexation

Careful consideration should be given to the criteria established in law governing the nature of area that may be annexed to a borough and the capacity of the borough to serve that area.



State law permits a borough annexation petition to be granted only if it:

1. meets applicable standards under Alaska's Constitution;

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2. meets applicable standards under regulations adopted by the Commission; and
3. is in the best interests of the state.

If those standards are not met, the annexation petition must be denied. Specifically, AS 29.06.040(a) states as follows:

The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

General Borough Annexation Standards

1. Annexation would foster maximum local self government, a fundamental principle in Article X, Section 1 of Alaska's Constitution, which promotes extension of borough government into unorganized areas of the state that otherwise meet applicable standards.
2. Annexation would promote minimum numbers of local government units, a fundamental principle in Article X, Section 1 of Alaska's Constitution, which promotes large boroughs that otherwise meet applicable standards.
3. Annexation would not diminish the distinction between a city government and a borough government; Article X, Sections, 2, 5, 7, and 13 distinguishes boroughs as regional governments from cities as community-level governments.
4. Annexation would promote a borough that encompasses a large, natural region, one that maximizes the area and population within its boundaries while maintaining common interests, as called for in Article X, Section 3 of Alaska's Constitution.
5. Based on relevant factors listed in 3 AAC 110.160(a), plus other relevant factors, the social, cultural, and economic characteristics and activities of the people in the area proposed for annexation must



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be interrelated and integrated with the characteristics and activities of the people in the existing borough.

6. Based on relevant factors listed in 3 AAC 110.160(b), plus other relevant factors, the communications media and the land, water, and air transportation facilities throughout the proposed borough boundaries must allow for the level of communications and exchange necessary to develop an integrated borough government.

7. Based on relevant factors listed in 3 AAC 110.170, plus other relevant factors, the population of the proposed borough after annexation must be sufficiently large and stable to support the resulting borough.

8. Based on relevant factors listed in 3 AAC 110.180, plus other relevant factors, the economy within the proposed borough boundaries must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.



9. Based on relevant factors listed in 3 AAC 110.190(a), plus other relevant factors, the proposed boundaries of the borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level.

10. The area proposed for annexation must be contiguous to the existing boundaries of the borough and must not create enclaves in the expanded boundaries of the borough. Alternatively, under 3 AAC 110.190(b), a specific and persuasive showing must be made that annexation of noncontiguous area, or area that would create enclaves, would include all land and water necessary to allow, on an efficient, cost-effective level, the full development of services determined to be essential borough services under 3 AAC 110.970.



11. The area proposed for annexation must not extend beyond the model borough boundaries developed for that borough. Alternatively, under 3 AAC 110.190(c), a specific and persuasive showing must be made that annexation of an area extending beyond the model borough boundaries otherwise satisfies applicable borough boundary standards.

12. Under 3 AAC 110.190(d), consultation must occur with the Department of Education and Early Development in the process of balancing all standards for annexation to a borough.

13. Under 3 AAC 110.190(e), if a petition for annexation to a borough describes boundaries overlapping the boundaries of an existing organized borough, the

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petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough.

14. Based on relevant factors listed in 3 AAC 110.195, plus other relevant factors, annexation to the borough must be in the best interests of the state under AS 29.06.040(a) and 3 AAC 110.980.
15. In accordance with 3 AAC 110.910, the proposed annexation to the borough may not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.
16. The petitioner must prepare a proper transition plan under 3 AAC 110.900.



Additional borough annexation standards

For a legislative-review annexation proposal, 3 AAC 110.200 provides that at least one of the circumstances outlined in 3 AAC 110.140 (1) – (10) must exist in the area proposed for annexation. Those circumstances are:

- (1) the area manifests a reasonable need for borough government that can be met most efficiently and effectively by the annexing borough;
- (2) the area is an enclave surrounded by the annexing borough;
- (3) the health, safety, or general welfare of borough residents is or will be endangered by conditions existing or potentially developing in the area, and annexation will enable the borough to regulate or control the detrimental effect of those conditions;
- (4) the extension of borough services or facilities into the area is necessary to enable the borough to provide adequate services to borough residents, and it is impossible or impractical for the borough to extend the facilities or services unless the area is within the boundaries of the borough;
- (5) residents or property owners within the area receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the area, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (6) annexation of the area will enable the borough to plan and control reasonably anticipated growth or development in the area that otherwise may adversely impact the borough;
- (7) repealed 5/19/2002;
- (8) annexation of the area will promote local self-government with a minimum number of government units;
- (9) annexation of the area will enhance the extent to which the existing borough meets the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065;

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(10) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the area by the legislative review process.

For a local action annexation, 3 AAC 110.210 provides that an area contiguous to the borough to which annexation is sought, that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.195 and has been approved for local action annexation by the Commission, may be annexed to a borough by any one of the following actions:

(1) borough ordinance if the area is wholly owned by the annexing borough;

(2) borough ordinance and a petition signed by all of the voters and property owners of the area;

(3) approval by a majority of voters residing in the area voting on the question at an election;

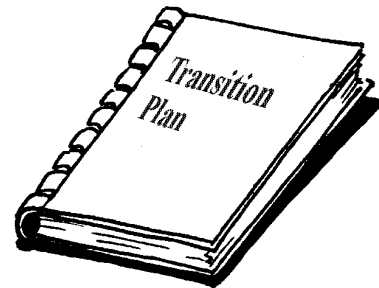
(4) approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing borough;

(5) approval by a majority of the voters who vote on the question within the annexing borough if the area is uninhabited.

Consider How Annexation Would Be Implemented

State law (3 AAC 110.900) requires that every annexation proposal include a transition plan explaining how annexation will be implemented. The plan must demonstrate:

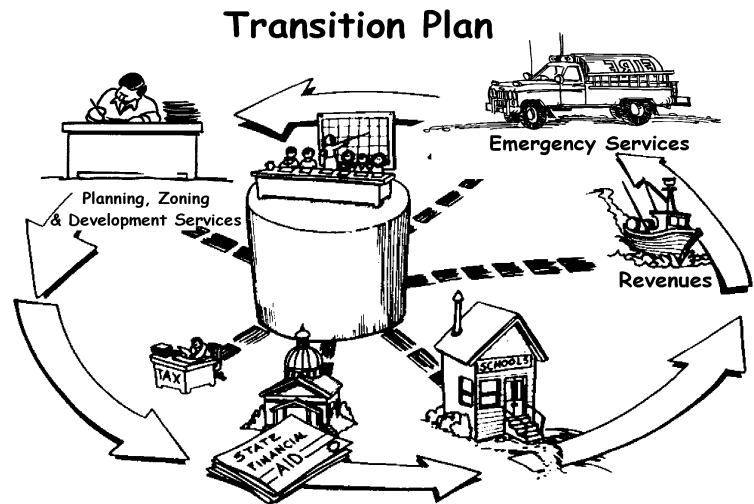
- A. the intent and capability of the borough to extend essential borough services [as determined by 3 AAC 110.970] into the area proposed for annexation in the shortest practical time following annexation (not to exceed two years);
- B. the manner in which the borough will assume all relevant and appropriate powers, duties, rights, and functions presently exercised within the area proposed for annexation;
- C. the manner in which the borough will assume and integrate all relevant and appropriate assets and liabilities of entities providing those services to the area that will be assumed by the borough without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities; and
- D. that the plan was prepared in consultation with entities currently responsible for or otherwise providing those services to the area that will be assumed by the borough.



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The transition plan should specifically address:

1. what specific powers, services, taxes, license requirements, and zoning or other regulations will be extended to the area proposed for annexation;
2. what schedule will guide the extension of powers, services, and taxes, license requirements, and regulations;
3. whether special circumstances are contemplated in conjunction with anticipated levels of services and taxes in the area proposed for annexation;
4. what costs are reasonably anticipated in connection with the proposed extension of powers, services, taxes, license requirements, and zoning or other regulations;
5. what revenues are reasonably anticipated to be gained by the borough as a result of annexation;
6. what financial impacts annexation would have on other governments;
7. what assets and liabilities the borough would assume from agencies and organizations currently providing services to the area proposed for annexation;
8. plans for transition of relevant local laws currently in place in the borough;
9. the effect that annexation will have on powers or services currently provided or exercised by others in the area;
10. if the area proposed for annexation is within one or more service areas of an organized or unorganized borough, how annexation will affect the nature of the service area (e.g. abolition of the service area or detachment of a portion of the service area).



Need for Public Hearing Before Filing a Petition



Before a legislative-review annexation proposal may be filed with the Commission, a public hearing is required under 3 AAC 110.425. Although not required under other methods of annexation, such public hearings are an effective and appropriate means to maximize the effectiveness of the annexation planning process. The importance of such hearings is not present, however, in certain local action annexations such as where the borough owns the property being annexed or there is unanimous consent of the property owners and voters in such area.

For legislative-review annexation proceedings, the process set out in 3 AAC 110.425 must be carefully followed. In any case where a hearing is to be held, it would be ideal to make a draft of the prospective annexation petition available for public review well in advance of the public hearing. Preferably, a summary of the annexation proposal, including a map of the area contemplated for annexation, synopsis of the application of the annexation standards to the proposal by the prospective petitioner, and an outline of the reasonably anticipated effects of annexation will also be available for public review in advance of the hearing. Copies of the prospective petition should be made available for public review at convenient locations in or near the area proposed for annexation.

Ideally, public notice of the hearing should be given in the manner provided for a hearing of the Local Boundary Commission under 3 AAC 110.550. The hearing should be held at a convenient location in or near the area proposed for annexation. It should provide for a period of comment on the proposal from members of the public. If the prospective petitioner is a municipality, the governing body should conduct the hearing.

Appropriate hearing topics would include: (1) annexation standards and their application to the annexation proposal; (2) proposed method for annexation; and (3) the reasonably anticipated effects of the proposed annexation. It would be fitting to include a transcript or detailed account of the hearing as an appendix of the petition.

Technical Assistance, Forms, and Sample Materials Available

Local Boundary Commission staff members are available to provide technical assistance, petition forms, and sample annexation materials to prospective petitioners, prospective respondents (those favoring or opposing annexation), and to other interested individuals and groups.

For more information about annexation of an area to a borough, or other matters relating to the Local Boundary Commission contact:

Local Boundary Commission Staff

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Information about annexation to boroughs is also available on the Local Boundary Commission's Internet Web site at:

< <http://www.dced.state.ak.us/dca/lbc/lbc.htm> >